STATE OF MICHIGAN

COURT OF APPEALS

In the Matter of SHANNON TARIEK MILLER and LESINGTIN MILLER, Minors.

FAMILY INDEPENDENCE AGENCY,

Petitioner-Appellee,

V

EMILY JEAN MILLER,

Respondent-Appellant.

UNPUBLISHED
August 7, 2001

No. 226888
Wayne Circuit Court
Family Division
LC No. 99-383889

Before: Doctoroff, P.J., and Murphy and Zahra, JJ.

PER CURIAM.

Respondent appeals as of right from the trial court's order terminating her parental rights to the minor children under MCL 712A.19b(3)(j). We affirm.

I

Respondent first argues that the trial court erred in admitting three photographs into evidence. We review a trial court's decision regarding the admission of evidence for an abuse of discretion. *Ellsworth v Hotel Corp of America*, 236 Mich App 185, 188; 600 NW2d 129 (1999). An abuse of discretion occurs if an unprejudiced person, considering the facts on which the trial court acted, would say that there was no justification or excuse for the ruling made. *Id*. We conclude that the trial court did not abuse its discretion in admitting the photographs. The photographs were relevant to corroborate the police officers' testimony regarding the scene that they observed when they found Shannon bound to a bucket in respondent's basement. We are satisfied that the probative value of the photos was not substantially outweighed by the danger of unfair prejudice. MRE 403; *People v Mills*, 450 Mich 61, 76-77; 537 NW2d 909, modified 450 Mich 1212 (1995).

II

Respondent next argues that the trial court abused its discretion by admitting testimony under the tender-years exception to the hearsay rule, MCR 5.972(C)(2). Respondent claims that

Shannon did not have the mental state to make a trustworthy statement and, therefore, Officer Banks' testimony regarding her questioning of Shannon should have been excluded. At the time of the police questioning, Shannon was just shy of ten years old. The statements at issue concerned Shannon's account of an act of maltreatment. This maltreatment was corroborated by the eyewitness testimony and physical evidence. Shannon's statements were made to a police officer in the presence of a social worker, who corroborated the officer's account of the statements. We conclude that the circumstances surrounding the statements provide adequate indicia of trustworthiness, and there was sufficient corroborative evidence to justify admission under MCR 5.972(C)(2); *In re Brimer*, 191 Mich App 401, 405; 478 NW2d 689 (1991).

III

Next, the trial court did not err in denying respondent's motion for a directed verdict at the adjudicatory trial. Petitioner introduced evidence indicating when police officers arrived at respondent's home in response to an allegation of child neglect, respondent told them she and Lesingtin were the only people present in the house. The officers testified that when they investigated the basement of the house, respondent refused to allow them into the furnace room, claiming that her dog was in the room. When the officers entered that room, Shannon was found tied to a five-gallon bucket in a sitting position. His hands and neck were bound to the handle of the bucket. According to police officers, respondent admitted tying Shannon in that position as discipline for "fighting her." There was testimony that the bucket was approximately one-inch full of urine. Psychiatrists testified regarding the emotional and mental trauma that such an incident could cause both children. Under these circumstances, the evidence presented a question of fact upon which reasonable minds could differ regarding whether respondent neglected or otherwise abused Shannon. Therefore, the trial court properly denied respondent's motion for a directed verdict. *Meagher v Wayne State Univ*, 222 Mich App 700, 708; 565 NW2d 401 (1997); *Altar v Mercy Memorial Hospital*, 208 Mich App 518, 524; 529 NW2d 318 (1995).

IV

Finally, the trial court did not clearly err in finding that the statutory ground for termination was established by clear and convincing evidence. MCR 5.974(I); *In re Miller*, 433 Mich 331, 337; 445 NW2d 161 (1989). The evidence was sufficient to support a finding that respondent bound Shannon by his hands and neck to the bucket and left him alone in the basement where he was found by police officers. The evidence further indicated that Shannon is a learning disabled child in need of special care. Respondent continuously denied harming Shannon or neglecting him in anyway. She contended that the police officers were conspiring against her. These circumstances support the finding that Shannon would likely be harmed if returned to respondent's care. MCL 712A.19b(3)(j). Respondent's maltreatment of Shannon and her demonstrated refusal to see the inadequacies of her conduct support a finding that there is a reasonable likelihood that Lesingtin would be harmed if returned to respondent's care. See *In re AH*, 245 Mich App 77, 84; __ NW2d __ (2001) (quoting this Court's statement in *In re LaFlure*, 48 Mich App 377, 392; 210 NW2d 482 (1973), regarding the doctrine of anticipatory neglect, "[h]ow a parent treats one child is certainly probative of how that parent may treat other children.") Furthermore, considered in its entirety, the evidence did not show that termination of

respondent's parental rights was clearly not in the children's best interests. MCL 712A.19b(5); *In re Trejo*, 462 Mich 341, 356-357; 612 NW2d 407 (2000).

Affirmed.

/s/ Martin M. Doctoroff
/s/ William B. Murphy
/s/ Brian K. Zahra